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MOHD ALIF ANAS MD NOOR & ORS v. MENTERI PENDIDIKAN MALAYSIA & ORS

HIGH COURT MALAYA, KUALA LUMPUR
MOHD NAZLAN GHAZALI J
[CIVIL SUIT NO: WA-21NCVC-84-12-2019]
13 JANUARY 2022

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Abstract – *The determination of questions under O. 14A of the Rules of Court 2012 for the purpose of disposal of a suit does not warrant a full trial because such an exercise will not require the examination of witnesses and evidence. In this case, the reliefs sought could instead be comfortably derived from the interpretation of statutes and the Federal Constitution. The scope of O. 14A is also not confined to questions of law for it extends also to the determination of 'construction of any document'.*

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CIVIL PROCEDURE: *Disposal on point of law – Establishment of national type schools – Whether ss. 2, 17 and 28 of Education Act 1996 inconsistent with art. 152(1) of Federal Constitution – Whether establishment and existence of Chinese and Tamil national type schools inconsistent with arts. 5, 8, 10, 11 and 12 of Federal Constitution – Whether matters in contention justiciable – Whether points raised merely questions of law – Whether question on interpretation of statute of law and Federal Constitution*

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These applications were filed by the first and second defendants, sixth and seventh defendants and the 13th defendant, supported by all the other defendants except the 12th defendant who had withdrawn, to dispose of the plaintiff's suit by way of determination of questions of law, pursuant to O. 14A r. 1 or O. 33 r. 2 of the Rules of Court 2012 ('ROC'). The plaintiffs had filed a writ action primarily against the Minister of Education and the Government, seeking declarations that: (i) ss. 2, 17 and 28 of the Education Act 1996 ('Act') to the extent these provision permit the establishment of national type schools – Chinese and Tamil national schools which conduct teaching and learning in the Chinese and Tamil language in their respective medium of instructions, was contrary to art. 152(1) of the Federal Constitution ('FC') and was therefore invalid and void to the extent of the said contradiction; (ii) the existence of national type Chinese and Tamil schools have further also resulted in a situation that was inconsistent with arts. 5, 8, 10, 11 and 12 of the FC; and (iii) the first and second defendants shall take all steps necessary to ensure that the existence of national type Chinese and Tamil schools existing in Malaysia, shall be in accordance with art. 152(1) of the FC. The questions of law raised were: (i) whether the plaintiffs have *locus standi* to initiate the writ ('first question'); (ii) whether

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the matters in contention were justiciable ('second question'); (iii) whether ss. 2, 17 and 28 of the Act were inconsistent with art. 152(1) of the FC ('third question'); and (iv) whether establishment and existence of Chinese and Tamil national type schools was inconsistent with arts. 5, 8, 10, 11 and 12 of the FC ('fourth question'). A

Held (allowing applications): B

(1) The questions here were not merely question of law but the very question on the interpretation of statute of law and the FC no less. Principles of statutory interpretation and concerning construction of constitutional provisions would apply. These include where relevant ascertaining the intention of the drafters by referring to *Hansard* as an aid to interpretation. In addition, the majority of the documents were published after the Act came into force. Yet the idea of the plaintiffs was to ascertain whether the later documents could successfully challenge the intention of Parliament that enacted the statute in 1996. Neither have the plaintiffs identified whose these witnesses might be and how many of them were they intending to call. (paras 32 & 33) C D

(2) On justiciability, the relevant material facts for determination of this question were the Government's policy in relation to the national education system. These facts were contained in several education reports which were relied upon by all parties to this action. There was no dispute of facts as to what was the Government's policy in relation to the national education system. However, arguments on justiciability would be that the dispute was one that the judicial process was not equipped to deal with and that the court should refrain from deciding on the same. The issue of justiciability did not require any *viva voce* evidence. (para 38) E F

(3) The plaintiffs intended to refer to opinions published by certain individuals and in newspaper reports. However all these documents were essentially opinions, which were expressed by individual authors, and were plainly purely academic. Their opinions were irrelevant to the construction of the Federal Constitution, the Education Act 1996 and other historical reports. These opinions were not binding on and would not influence the court in arriving at its conclusion as to what the impugned provisions meant. (paras 43 & 44) G H

(4) The suits filed by the plaintiffs appeared more like an academic exercise because the Act was not a law specifically targeted at a particular group of which the plaintiffs were a part. It certainly could not be said that the plaintiffs were facing a real and credible threat under the said legislation. There is additionally no real and actual controversy affecting the rights and interests of the parties, including the plaintiffs. (para 46) I

(5) The defendants have established their case to have this suit be determined by way of an O. 14A proceeding by reference to the two main questions of law to be answered by this court. These are whether ss. 2, 17 and 28 of the Act were contrary to art. 152(1) of the FC and whether the establishment and existence of vernacular schools were inconsistent with arts. 5, 8, 10, 11 and 12 of the FC. (para 59)

Case(s) referred to:

Ah Thian v. Government of Malaysia [1976] 1 LNS 3 FC ***(refd)***

Director Of Forests, Sarawak & Anor v. Racha Urud & Ors And Other Appeals [2017] 5 CLJ 389 FC ***(refd)***

Dr Koay Cheng Boon v. Majlis Perubatan Malaysia [2012] 4 CLJ 445 FC ***(refd)***

Gin Poh Holdings Sdn Bhd v. The Government Of The State Of Penang & Ors [2018] 4 CLJ 1 FC ***(refd)***

Kerajaan Negeri Kelantan v. Petroliam Nasional Berhad & Other Appeals [2014] 7 CLJ 597 FC ***(refd)***

Leong Ah Kew & Ors v. Prisma Suria Sdn Bhd [2015] 8 CLJ 300 HC ***(refd)***

Merdeka University Bhd v. Government of Malaysia [1981] CLJ 175; [1981] CLJ (Rep) 191 ***(refd)***

Merdeka University Bhd v. Government Of Malaysia [1982] 1 LNS 1 FC ***(refd)***

Mohd Khairul Azam Abdul Aziz v. Menteri Pendidikan Malaysia & Anor [2020] 9 CLJ 309 FC ***(refd)***

Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal [2003] 4 CLJ 337 CA ***(refd)***

Savant-Asia Sdn Bhd v. Sunway PMI-Pile Construction Sdn Bhd [2008] 6 CLJ 681 FC ***(refd)***

Sussex Peerage Case (1844) 11 CI & Fin 85 ***(refd)***

Thein Hong Teck & Ors v. Mohd Afrizan Husain & Another Appeals [2012] 1 CLJ 49 FC ***(refd)***

Legislation referred to:

Education Act 1996, ss. 2, 17, 28

Evidence Act 1950, s. 57(1)(a), (2), (3)

Federal Constitution, arts. 4(4), 5, 8, 10, 11, 12, 128(1), 152(1)

Rules of Court 2012, O. 14A r. 1, O. 33 r. 2, O. 34

Rules of the High Court 1980, O. 14A

For the plaintiff - Hanif Khatri & Aidil Khalid; M/s Amelda Fuad Abi & Aidil

For the 1st & 2nd defendants - Liew Horng Bin; SFC & Nor 'Aqilah Abdul Halim; DPP

For the 3rd defendant - Alison Goh Poi Sze; M/s KK Mak & Co

For the 4th defendant - Vischaal Yogaratnam; M/s Vas & Co

For the 5th defendant - Ben Chang Chong Choon & Syazwani Mahmud; M/s Ben Chan

For the 8th defendant - Hanan Mohamad Kamal & Siow Pui Yee; M/s Arthur Wang Lian & Assocs

For the 9th & 10th defendants - JD Kumaran; M/s J Ganeson Tajul Annuar & Co

For the 11th defendant - Kamiini Muniandy; M/s RV Lingam & Co

For the 12th defendant - Haziq Aizuddin Subhi; M/s Haziq A Subhi

Reported by Lina E

JUDGMENT

Mohd Nazlan Ghazali J:

Introduction

[1] These are the applications filed by the first and second defendants (encl. 182), the sixth and seventh defendants (encl. 185) and the 13th defendant (encl. 187), supported by all the other defendants (apart from the 12th defendant which had withdrawn and only held a watching brief) for the suit filed by the plaintiffs to be disposed by way of the determination of questions of law pursuant to O. 14A r. 1 or O. 33 r. 2 of the Rules of Court 2012 ("the RC 2012").

[2] At the end of the hearing of the applications which was conducted *via* Zoom video technology, I allowed the applications and highlighted the main grounds for my decision. This judgment contains the full reasons for the same.

Key Background Facts

[3] The first plaintiff is the President of Gabungan Pelajar Melayu Semenanjung (GPMS) and is suing on its behalf, whilst the second plaintiff is the Secretary of Majlis Pembangunan Pendidikan Islam Malaysia (MAPPIM) and is suing on its behalf. The third plaintiff is a representative of Gabungan Persatuan Penulis Nasional Malaysia (GAPENA).

[4] The plaintiffs filed a writ action primarily against the Minister of Education and the Government which essentially sought the following reliefs in their statements of claim:

(i) a declaration that ss. 2, 17 and 28 of the Education Act 1996, to the extent these provisions permit the establishment of national type schools – Chinese and Tamil national schools which conduct teaching and learning in the Chinese and Tamil language in their respective medium of instructions, is contrary to art. 152(1) of the Federal Constitution and is therefore invalid and void to the extent of the said contradiction;

(ii) a declaration that the existence of national type Chinese and Tamil schools have further also resulted in a situation that is inconsistent with art. 5 (the right to life or personal liberty), art. 8 (right to equality), art. 10 (right to freedom of speech, assembly and association), art. 11 (freedom of religion), and art. 12 (rights in respect of education) of the Federal Constitution; and

(iii) a declaration that the first and second defendants shall take all steps necessary to ensure that the existence of national type Chinese and Tamil schools existing in Malaysia, shall be in accordance with art. 152(1) of the Federal Constitution, within six years from the date of this decision.

[5] By agreement, several other parties are made as other defendants in this action. The relevant defendants, as identified earlier, then filed the instant applications under O. 14A r. 1 of the RC 2012, or under O. 33 r. 2 and/or the inherent jurisdiction of the court for the disposal of this action by the determination of the following issues of law:

(i) whether ss. 2, 17 and 28 of the Education Act 1996 are inconsistent with art. 152(1) of the Federal Constitution; and

(ii) whether the establishment and existence of Chinese and Tamil national type schools is inconsistent with arts. 5, 8, 10, 11 and 12 of the Federal Constitution.

[6] The first and second defendants proposed two other questions which they say the answers to which would do away with the need to address the above two questions. The first is whether the plaintiffs have *locus standi* to initiate this writ and secondly whether the matters in contention are justiciable.

[7] The plaintiffs opposed these applications. They argue that the case cannot suitably be determined under the O. 14A process as they involve a mixed question of law and fact which would warrant the need for oral testimony by the calling of witnesses. In sharp contrast, *albeit* unsurprisingly, the defendants – many of whom chose to file written submissions in support – are quite unanimous in expressing the view that this case is eminently suited for determination and disposal under O. 14A.

Analysis And Findings Of This Court

The Law And Principles

[8] The provisions of O. 14A of the RC 2012 read as follows:

14A. Disposal of case on point of law

1. Determination of questions of law or construction (O. 14A r. 1)

(1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that-

(a) such question is suitable for determination without the full trial of the action; and

(b) such determination will finally determine the entire cause or matter or any claim or issue therein.

(2) On such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.

(4) The jurisdiction of the Court under this Order may be exercised by a Registrar.

(5) Nothing in this Order shall limit the powers of the Court under O. 18, rule 19 or any other provisions of these Rules.

2. Manner in which applications under rule 1 may be made (O. 14A r. 2)

An application under rule 1 may be made by a notice of application or, notwithstanding O. 32, rule 1, may be made orally in the course of any interlocutory application to the Court.

[9] It is useful to first refer to the principles governing the application of O. 14A of the RC 2012. In *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337; [2004] 1 MLJ 8 the Court of Appeal in clear fashion held:

12. In a nutshell, the Order enables the court to determine any question of law or construction of document where it appears to the court that such question is suitable for determination without the full trial of the action and such determination will finally determine the entire cause or matter or any claim or issue therein. The order is new to our civil procedure and hence, the few local decisions of the High Court on the ambit of O. 14A are not instructive. For that reason, we are inclined to refer to foreign cases decided on the equivalent of our O. 14A. In *Korso Finance Establishment Anstalt v. John Wedge* (unreported, February 15 1994 (CA) Transcript No 14/387), the English Court of Appeal laid down the following principles on the ambit of O. 14A:

(1) An issue is 'a disputed point of fact or law relied on by way of claim or defence'.

(2) A question of construction is well capable of constituting an issue.

(3) If a question of construction will finally determine whether an important issue is suitable for determination under O. 14A and where it is a dominant feature of the case a court ought to proceed to so determine such issue.

(4) Respondents to an application under O. 14A are not entitled to contend they should be allowed to hunt around for evidence or something that might run up on discovery which could be relied upon to explain or modify the meaning of the relevant document. If these were material circumstances of which the court should take account in construing the document, they must be taken to have been known, and could only be such as were known, to the parties when the agreement was made, hi the absence of such evidence the court should not refrain from dealing with the application (see *The Supreme Court Practice 1999* Vol 1 para 14A/2/5).

13. In the same case, it was held:

In my judgment the question of construction is well capable of constituting an issue in the cause or matter. An issue may be said to be a disputed point of fact or law relied on by way of claim or

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> defence. In the present case the determination of the question of construction one way or the other will finally determine an important issue, namely whether the respondents are primarily liable under the agreement. If the determination is in favour of the appellant it will finally determine the entire matter ...

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> 14. This position was followed by the Singapore Court of Appeal and the High Court when dealing with O. 14 r. 12 of the Rules of Court, our equivalent of O. 14A, which recognised that resort to the procedure can be made to even where it does not dispose of the entire cause or matter (see *Payna Chettiar v. Maimoon bte Ismail & Ors* [1997] 3 SLR 387; *Microsoft Corporation & Ors v. Summit Holdings Ltd & Anor And Other Appeals* [1999]

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> 4 SLR 529 and *Kamla Lal Hiranand v. Harilela Padma Hari & Ors* [2000] 3 SLR 696). Order 14A should be read, *inter alia*, with O. 14 (summary judgment) and O. 18 r. 19 (striking out pleadings and endorsements) (see *The Supreme Court Practice 1999* Vol 1 para 14A/0/2) and O. 14A r. 1(5) of both our order and the English order provide that nothing in the order shall limit the powers of the court under O. 18 r. 19.

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> 15. The principles established in the cases cited are of great persuasive force as they deal with similar provision of the civil procedure. Hence, we are inclined to follow them.

[10] In its analysis of the authorities on the subject, the Federal Court in

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Kerajaan Negeri Kelantan v. Petroliam Nasional Berhad & Other Appeals [2014] 7 CLJ 597; [2014] 6 MLJ 31 later approved of the earlier decision of the Court of Appeal in *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu* (*supra*) which was decided under the previous O. 14A of the Rules of the High Court 1980. These passages are especially pertinent:

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> [26] Learned counsel for Petronas submitted that the decisions of the Federal Court on O. 14A in cases referred to by learned counsel for the plaintiff do not depart from the Terengganu's case and further, do not set up any new proposition of law. It was argued by learned counsel for Petronas that in *Dream Property* and *Thein Hong Tec*k respectively, the Federal Court had decided that recourse to O. 14A is unsuitable in the

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> circumstances of those cases since there were serious dispute of facts involved, which can be distinguished from the present case. It was further argued that the Federal Court in *Bato Bagi* also made no critical remark on the decision in the *Terengganu*'s case. In this regard, the same stand was also taken by learned senior federal counsel for the second defendant.

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> [27] We are in agreement with the submission of learned counsel and senior federal counsel for Petronas and second defendant respectively that the decisions of the Federal Court on the application of O 14A in the three cases cited above do not in any way depart or steer away from the decision in the *Terengganu*'s case. In our view, the Court of Appeal in

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> the *Terengganu*'s case did not attempt to lay down a hard and fast rule on the application of O. 14A. The decision in the *Terengganu*'s case merely

stated some of the relevant factors which should be considered in dealing with an application under O. 14A and they are not meant to be exhaustive. This view had already been expressed by Richard Malanjum CJSS in *Bato Bagi* which says:

> With respect, I do not think the Court of Appeal in *Petroleum Nasional Bhd* laid down a hard and fast rule for courts to comply with when confronted with applications under O. 14A. All the Court of Appeal did was to state the relevant factors which should be considered and which in my view the relevant factors to consider are not exhaustive ...

[28] We share the same view as expressed in *Bato Bagi* above and we are unable to understand how the decision in that case can be said to have steered away from the decision of the Court of Appeal in the *Terengganu*'s case, as argued by counsel for the plaintiff.

[29] Meanwhile, *Dream Property* concerns the issue of the determination of delivery of vacant possession and the confirmation thereof pursuant to the special condition of a sale and purchase agreement entered into between the parties. In *Thein Hong Teck*, among the critical disputes were the issues of dissolution of a partnership before the filing of a petition for winding up and the preservation of rights of the partnership in respect of legal actions commenced before the dissolution of the partnership (as a result of the Federal Court order in one of the many suits filed in connection with the partnership). The issues in these two cases, as viewed by the Federal Court, were questions of facts which were seriously disputed between the parties and required to be determined in a full trial, to which the application of O. 14A was held unsuitable in the circumstances of those cases. In addition, it is also to be noted that in *Dream Property*, there was no question of law framed or a specific question on the construction of the agreement forwarded by the plaintiff to the court for consideration. By the above decisions, it is clear that the position of the law in an O. 14A application is that where there are serious disputes of facts involved, it is inappropriate and unsuitable to have recourse to an O. 14A procedure. In contrast, the Court of Appeal in the Terengganu's case, after having carefully scrutinised the pleadings, concluded that the issues raised were purely legal issues based on the construction of documents which are suitable to be determined by the O. 14A procedure. In our considered view, the facts and circumstances in the three cases above and in the *Terengganu*'s case, must be distinguished. The decisions of the Federal Court in those three cases did not change or set up any new proposition of law on the application of O. 14A laid down in *Terengganu*'s case and therefore, we answer the first question posed in the affirmative.

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[36] It is well settled that an issue is only suitable for determination under O. 14A if the points of law to be determined thereunder have been stated in clear and precise terms and the facts disclosed by the pleadings and affidavit evidence are sufficient for the court to make such determination

which would be final as to the entire cause or matter (see *Allen v. Gulf Oil Refining Ltd* [1980] QB 156 and *Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd* [2008] 2 CLJ 686). The trial judge is therefore vested with the discretion to rely on the pleadings or to rely on affidavit evidence before him to determine whether the matter is suitable for determination without full trial of the action (see *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd*). The plaintiff in its statement of claim pleaded that the rights and ownership of petroleum, whether onshore or offshore belong to the plaintiff. The plaintiff contended that pursuant to the PDA and the Kelantan petroleum agreement signed between the plaintiff and Petronas, the plaintiff had freely and voluntarily relinquished to Petronas the ownership of all petroleum/land rights in good faith and for valuable consideration in the form of cash payments referred to in the PDA and the Kelantan petroleum agreement. The plaintiff further contended that it was not the intention of the plaintiff that ownership of its petroleum resources and the rights and privileges of exploiting, winning and obtaining petroleum onshore and offshore Kelantan would be vested without consideration or compensation, that is, as a gift to Petronas. In contrast, Petronas in its defence contended that the plaintiff's rights, if any, in respect of land or ownership of petroleum or the exploration, exploitation or winning of petroleum in any form is limited to three nautical miles adjacent to the coast of the State of Kelantan (its territorial waters). Petronas further contended that the plaintiff never possessed any rights of whatsoever nature in and over the sea and submerged land beyond the territorial waters off and the continental shelf adjacent to the coast of the State of Kelantan and in the circumstances, there is no liability on the part of Petronas to make payment claimed for by the plaintiff whether under contract or in law. Meanwhile, the second defendant in its defence contended that petroleum won and saved by Petronas in the continental shelf belonged to the second defendant and as such denied the plaintiffs rights to any cash payment in that respect.

[11] In this case of *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd & Other Appeals*, the relevant statute was the Petroleum Development Act 1974 and the agreement involved was a petroleum agreement dated 9 May 1975 executed pursuant to the said Act. The Court of Appeal upheld the decision of the High Court for certain questions of law in the suit to be determined under O. 14A. This was further affirmed by the Federal Court which in dismissing the appeal from the Kelantan State Government, being the plaintiff therein, determined from the pleadings that the core issue of the plaintiff's case was whether the plaintiff had any rights over petroleum won and saved in the continental shelf off its coast.

[12] It is also important to note that whilst O. 14A permits this court to determine any question of law or construction of document where it appears that such question of law or construction of document is suitable for determination without the full trial of the action, and that such determination will finally determine the entire cause or matter or any claim or issue therein,

this may even be premised on a single question for determination. In *Savant-Asia Sdn Bhd v. Sunway PMI-Pile Construction Sdn Bhd* [2008] 6 CLJ 681; [2009] 5 MLJ 754, the Federal Court held that:

> [38] Finally, based on the view that we have taken, clearly, this is a fit and proper case to be decided under O. 14A of the RHC on the single issue as posed to this court. The outcome of the claim by the respondent rests entirely on our answer to the question posed which purely involved the application of the facts which are not in dispute, to the relevant provisions of the Act and the WUR. On that premise, we hold that the claim may appropriately be disposed of under O. 14A (see *European Asian Bank AG v. Punjab and Sind Bank* [1983] 2 All ER 508).

[13] More relatively recently, the Federal Court in *Director Of Forests, Sarawak & Anor v. Racha Urud & Ors And Other Appeals* [2017] 5 CLJ 389 further affirmed this approach, and endorsed the commentary of a leading legal publication in the following terms:

> [35] On the applicability and the approach to be taken by the court in exercising its powers and discretion under O. 14A, we refer to the commentary on O. 14A appearing in the *Malaysian Court Practice* (Practitioner Edition), a publication of *The Malayan Law Journal* at pp. 125-127 which reads as follows:
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> > [14A.1.3.] Suitable question of law or construction The question of law or construction must be suitable to be determined without the full trial of the action. The test of whether the question of law or construction is 'suitable' to be determined under this order is *whether all the necessary and material facts relating to the subject matter of the question have been duly proved or admitted, and this postulates that there is no dispute or no further dispute as to the relevant facts at the time when the court proceeds to determine the question*. The suitability of disposing of an action under this order depends entirely on whether the court can determine the question of law raised without a full trial of the action. For example see *Manganmal Jhamatmal Lalwani v. NE Vickerama* [2001] 1 SLR 90 (where the plaintiff made an application for a ruling on the preliminary issue as to whether there was an issue estoppel).
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> > In cases where all the relevant evidence is before the court, and where the point of law depends entirely on the construction of relevant documents in their context and it is not suggested that any further evidence could be available, it would be appropriate for the question to be dealt with under O. 14A rather than to allow it to go for trial. See *European Asian Bank AG v. Punjab and Sind Bank* [1983] 2 All ER 508 at p 521, CA (construction of letter of credit). For the law as to construction, see *Prenn v. Simmonds* [1971] 3 All ER 237.

A The question of law or construction to be determined by the court under this order should be stated or formulated in clear, careful and precise terms, so that there should be no difficulty or obscurity, still less any ambiguity or fictitious facts, about what is the question that has to be determined: *Allen v. Gulf Oil Refining Ltd* [1979] 3 All ER 353. There must be no hypothetical or future facts: *Summer v. William Henderson & Sons Ltd* [1963] 2 All ER 712, CA (no facts were agreed and what the outcome of the evidence was most uncertain). Where the issues of fact are interwoven with the legal issues raised, it will be undesirable for the court to split the legal and factual determination, for to do so would in effect be to give legal rulings in vacuo or on a hypothetical ruling, which the court will not do (see State *Bank of India v. Marjani Marketing*, 1 March 1991, CA Transcript No. 9/0304).

The issue of law, if it is discernible at all, has to be discernible from the statement of claim and defence. If there could still be a debate as to whether on slightly different facts a cause of action might or might not exist, an application under O. 14A is inappropriate. The court should not be required to interpret the statement of claim to decide what point of law arises. An application under O. 14A is to decide clear points of law or construction apparent on the pleadings (see *Watson & Anor v. Dutton Forshaw Motor Group Ltd & Ors* [1998] EWCA 3245, 22 July 1998, CA). (emphasis added)

[14] Based on the authorities on O. 14A, a significant few of which are referred to herein, the key principles which may be stated on its application – which ultimately involves the exercise of judicial discretion – are as follows:

(i) the existence of a question of law is to be ascertained by reference to the facts disclosed in the pleadings and affidavit evidence, and once established, must be stated in clear and precise terms, sans any difficulty or obscurity, as the question of law or construction that the court is required to determine, and not be based on hypothetical or ambiguous facts;

(ii) to be deserving of disposal on point of law, the question of law must be established to be suitable for determination without the full trial of the action and that such determination must also be shown to finally resolve the entire cause of matter or any claim or issue therein;

(iii) a question of law is suitable to be determined under O. 14A process if all the necessary and material facts relating to the subject matter of the question are not in dispute and if the court can determine the question of law without oral evidence by witnesses; and

(iv) it is also not necessary for the entire case to be disposed of for it suffices if the determination resolves the substantial or dominant issue in the case.

The Application Of The O. 14A Principles To The Present Case

[15] The proposed questions formulated by the defendants making the applications are as set out in encls. 182, 185 and 187. The first question in encl. 182 relates to the *locus standi* of the plaintiffs. The first and fourth questions in encl. 187 involve the establishment of vernacular schools and whether their existence are inconsistent with art. 152 of the Federal Constitution. The second question in encl. 182 and the second question in encl. 187 are similar in contending that policy formulation is the purview of the Executive and the court is not the forum to determine these questions. The third question in encl. 182, the first question in encl. 185 and the third question in encl. 187 involve the interpretation of ss. 2, 17 dan 28 of the Education Act 1996 and whether they violate art. 152(1). The fourth question in encl. 182, the second in encl. 185 and the fifth in encl. 187 concern whether the establishment of the vernacular schools is inconsistent with arts. 5, 8, 10, 11 dan 12 of the Federal Constitution.

[16] In other words, there are four proposed questions. The first question is pertaining to the fact of whether or not the plaintiffs have a *locus standi* or the requisite legal standing to initiate and maintain this suit. The second question for determination concerns whether or not this court is the proper forum to determine any policy decisions made by the Government. The first, second and fourth defendants argue that these are matters within the purview of the Executive, and are thus non-justiciable. If it is ascertained that this court is not the proper forum for the determination of such Government policies, then such determination would in effect determine the entire cause of the plaintiffs' action.

[17] The third question is the core issue as to whether ss. 2, 17 and 28 of the Education Act 1996 infringe art. 152(1) of the Federal Constitution. The fourth and final question is on whether the establishment and existence of Chinese and Tamil medium schools are in contravention of arts. 5, 8, 10, 11 and 12 of the Federal Constitution.

[18] On the other hand, the plaintiffs raised the point that the issue of whether it is true that schools under the authority of the second defendant as the Minister of Education – specifically, as pleaded, the 1492 Sekolah Agama Rakyat, institusi tahfiz and pondok face difficulties to obtain financial allocation from the Government is a factual issue which cannot be addressed in an O. 14A hearing. The plaintiffs here argue that their members as taxpayers are directly affected by the existence of vernacular schools because the nation's finances are utilised for these vernacular schools, which existence they say is contrary to the Federal Constitution.

[19] The plaintiffs also contend that whether the matter is non-justiciable, it is imperative for the court to first determine what is the education policy of the country. Only after it is determined that the policy is not infringing the Federal Constitution could issue about its justiciability be raised.

[20] They further assert that the question on whether the vernacular schools infringe arts. 5, 8, 10, 11 and 12 can only be answered after examination of the facts related to certain specific incidents as pleaded by the plaintiffs. These concern incidents which involve not only matters of national unity and alleged discrimination, but also the rights, future and education of the students enrolled at the said schools. The plaintiffs' position is that these incidents show that that existence and maintenance of vernacular schools give rise to a situation that violate the said articles of the Federal Constitution.

[21] This question cannot therefore, according to the plaintiffs, answered *in vacuo*. The court ought not to give a ruling under O. 14A *in vacuo* on the basis of hypothetical facts. In *Thein Hong Teck & Ors v. Mohd Afrizan Husain & Another Appeal* [2012] 1 CLJ 49; [2012] 2 MLJ 299 the Federal Court said as follows:

> It is trite law that O. 14A of the Rules of the High Court 1980 may only be resorted of if there is no dispute by the parties as to the relevant facts, or that the court, upon scrutinising the pleadings concludes that the material facts are not in dispute. Where the issues of fact are interwoven with legal issues raised, it will be undesirable for the court to split the legal and factual determination for to do so would in effect be to give rulings in vacuo or on a hypothetical ruling, which the court will not do ... .

[22] In my judgment it is pretty clear that at the heart of the matter, despite the arguments now canvassed by the plaintiffs, the third question as mentioned earlier is directly related to the declaration that has been prayed for by the plaintiffs in their pleadings. This is precisely the question that is concerning the entirety of this case. It represents the very essence of the plaintiffs' cause of action, which does not therefore warrant the process of a full-blown trial given that the foundation of this argument will be solely based on the interpretation of legal documents and statutes, that are not in dispute.

[23] And further, the fourth question is for all intents and purposes the declaration that was prayed for by the plaintiff and is also similar to the third question which is anchored on arts. 5, 8, 10, 11 and 12 of the Federal Constitution, which should therefore be similarly based on the interpretation and construction of the constitutional, legislative and historical documents.

[24] The determination of the questions in these applications under O. 14A does not warrant a full trial because such an exercise will not require the examination of witnesses and evidence, as the reliefs sought from this writ action can instead be comfortably derived from the interpretation of the Education Act 1996 and the Federal Constitution.

[25] If regard be had, as it should, to the pleadings of the plaintiffs, it is not seriously denied that the defendants do not challenge the facts pleaded in the plaintiffs' pleadings because they are based on the plaintiffs' views on the construction of the Education Act 1996, the Federal Constitution and the various historical documents and reports.

[26] The statements of claim disclose three distinct aspects. The first is on the interpretive development of art. 152(1) of the Federal Constitution by making reference to the leading case of *Merdeka University Bhd v. Government Of Malaysia* [1982] 1 LNS 1; [1982] 2 MLJ 243, the statutory provisions being challenged in ss. 2, 17 and 28 of Education Act 1996, as well as a number of historical records and documents such as notably the Razak Report. The next refers to statements attributed to scholars, news portals and associations, pertaining to Chinese and Tamil medium schools whilst the third concerns an explanation of the purpose of the establishment of the plaintiffs along with the statements pertaining to the governmental approved allocations that were allocated to Chinese and Tamil medium schools.

[27] The necessary and material facts concerning the subject matter of the proposed questions are not in dispute because the material facts are statements that can only be decided upon by legal arguments instead of having a full trial hearing oral evidence.

[28] Indeed, if the suits were to be tried, it would require the calling of witnesses who are directly concerned in the establishment of key documents such as the Federal Constitution itself, the Education Act 1996, and the many education reports including the Rahman Talib Report, Razak Report, the Fenn-Wu Report as well as the Barnes Report and various other Government policy documents which had led to the continued existence of Chinese and Tamil medium schools. The plaintiffs would in any event not therefore be able to rely on the testimony of the said material witnesses due to the passage of time. After all, oral evidence is of no relevance to the interpretation of statutes and the Federal Constitution, and especially not when it is not even faintly suggested that the individuals involved in the drafting of the Federal Constitution are available to give evidence.

[29] It bears repetition that the scope of O. 14A is not confined only to questions of law for it extends also to the determination of "construction of any document". But it is trite that the construction of the Federal Constitution and Acts of Parliament, just like (if not more than) construction of a contract, is a pure question of law to be determined by the courts which are never bound by any concession made by any of the parties as to what its words mean.

[30] In *Leong Ah Kew & Ors v. Prisma Suria Sdn Bhd* [2015] 8 CLJ 300, I had said thus:

> [8] Common law has established a number of important principles in the interpretation of contracts, one of which, especially relevant for present purposes is that the construction of contract is a question of law for determination by the court and not by witnesses through their evidence. In *Bahamas International Trust Co Ltd v. Threadgold* [1974] 1 WLR 1514, Lord Diplock stated the following:
>
> > In a case which turns, as this one does, on the construction to be given to a written document, a court called on to construe the document in the absence of any claim to rectification, cannot be bound by any concession made by any of the parties as to what its language means. That is so even in the court before which the concession is made; a fortiori in the court to which an appeal from the judgment of the court is brought. The reason is that the construction of a written document is a question of law. It is for the judge to decide for himself what the law is, not to accept it from any or even all the parties to the suit; having so decided it is his duty to apply it to the facts of the case. He would be acting contrary to his judicial oath if he were to determine the case by applying what the parties conceived to be the law, if in his own opinion it were erroneous.
>
> [9] This has since been emphatically followed in Malaysian cases, such as in the Court of Appeal decision in *NVJ Menon v. The Great Eastern Life Assurance Company Ltd* [2004] 3 CLJ 96; [2004] 3 MLJ 38.

[31] On top of that, there appears to be no ambiguity in the words of the relevant provisions particularly the relevant sections in the Education Act 1996. Their natural and ordinary meaning should as such prevail. This passage in the case of *Sussex Peerage Case* (1844) 11 CI & Fin 85, was cited with approval by the Federal Court in *Dr Koay Cheng Boon v. Majlis Perubatan Malaysia* [2012] 4 CLJ 445; [2012] 3 MLJ 173, in the judgment of Mohd Ghazali FCJ, as follows:

> [47] In the *Sussex Peerage Case* (1844) 11 CI & Fin 85, Tindal CJ said:
>
> > … the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.
>
> I would say that the aforesaid rule in relation to the construction of an Act of Parliament is still good today.

[32] The questions here at not merely question of law but the very question on the interpretation of statute law and the Federal Constitution no less. Principles of statutory interpretation and concerning construction of constitutional provisions would apply. And these include where relevant ascertaining the intention of the drafters by referring to *Hansard* as an aid to interpretation.

[33] In addition, the majority of these documents were published after the Education Act 1996 came into force. Yet the idea of the plaintiffs is to ascertain whether these later documents could successfully challenge the intention of Parliament that enacted the statute in 1996. Neither have the plaintiffs identified who these witnesses might be and how many of them they are intending to call.

[34] But it must be emphasised that the courts interpret, not legislate. The courts do not review the policy and intent of Parliament on any legislation. Instead they interpret the relevant legislation in order to discover what the policy and intent of Parliament is and whether the same is consistent with the Federal Constitution.

[35] I do not think it is doubted by any of the litigants here that from the plaintiffs' pleadings, the crux of their action concerns the constitutionality of the vernacular schools or the Chinese and Tamil national-type schools. The plaintiffs plead and submit that ss. 2, 17 and 28 of the Education Act 1996 are inconsistent with art. 152(1) of the Federal Constitution. They place much reliance on the Federal Court decision in *Merdeka University Bhd v. Government of Malaysia* [1981] CLJ 175; [1981] CLJ (Rep) 191; [1981] 2 MLJ 356.

[36] The defendants, including particularly the first, second and sixteenth defendants challenged the plaintiffs' *locus standi* to file and maintain these suits. The first and second defendants also raised the issue of justiciability of the Government's policy in relation to the national education system.

[37] None of the issues raised in the proposed four questions however appears to require oral evidence. On *locus*, matters on the plaintiffs' objective, role and responsibility and the fact that the plaintiffs' members are taxpayers can be proved by the plaintiffs by way of affidavit evidence.

[38] On justiciability, the relevant material facts for determination of this question are the Government's policy in relation to the national education system. These facts are contained in several education reports which are relied upon by all parties to this action. There is no dispute of facts as to what the Government's policy in relation to national education system is. However, arguments on justiciability will be that the dispute is one that the judicial process is not equipped to deal and that the court should refrain from deciding on the same. The issue of justiciability does not require any *viva voce* evidence.

[39] On the third and most important question, as well as the related fourth question, the relevant and material facts are historical facts concerning the national education system, the establishment of the vernacular schools and the enactment of art. 152 of the Federal Constitution, the National Language Act 1963/1967, the Education Ordinance 1952, the Education Act 1961 and the Education Act 1996. These historical facts are documented in the several education reports and the *Hansard*, which are referred to herein, if not relied upon by all parties to the action. These historical facts are as recorded in the documents themselves.

[40] These four questions as formulated by the first and second defendants are I reiterate questions of law. The plaintiffs' contention that only the third question being one of law whilst the remaining questions are of mixed fact and law requiring witnesses to testify on the facts is in my view therefore misconceived.

[41] The core issue is purely a legal question based on the construction of the Federal Constitution and Education Act 1996. No other evidence is necessary to assist in their construction. As made clear in *Kerajaan Negeri Kelantan v. Petroliam Nasional Bhd And Other Appeals* (*supra*) where the question of construction is a dominant feature of a case, the court should proceed to determine the issue. Additionally the courts may also have regard to the relevant provisions in the Interpretation Act 1948 and 1967 and the Evidence Act 1950 to provide assistance in the interpretative process.

[42] I repeat that there is no necessity to call witnesses just to tender the several historical documents, such as the Barnes Report 1951, the Fenn-Wu Report 1951, the Razak Report 1956 and the Rahman Talib Report 1960 at the trial. These documents are available at the National Archives. Under s. 57(1)(a) of the Evidence Act 1950, the court is entitled to take judicial notice "of all laws or regulations having the force in law now or heretofore in force or hereafter to be in force in Malaysia or any part thereof". Under s. 57(2), on all matters of public history and literature, the court "may resort for its aid to appropriate books or documents of reference". Further, under s. 57(3), if the court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until the person produces any such book or document as it considers necessary to enable it to do so.

[43] On the other hand, the plaintiffs intend to refer to opinions published by certain individuals and in newspaper reports. These include, opinions by Sharon Carstens (University Kebangsaan Malaysia, May 2014), Utusan Malaysia news report dated 25 October 2014, a Malaysian Insider news report dated February 2015, "*The Colours of Inequality*" by Muhammed Abdul Khalid, AsiaOne news report dated 31 January 2008; *The Ant Daily* by Pauline Wong; Free Malaysia Today news report in 2017 entitled; "*Malay Mandarin teachers not for Chinese School, say Minister*", Free Malaysia Today

news report entitled: "*Malay teacher is not for Chinese School, say Ministry*"; Astro Awani report in January 2016; Free Malaysia Today news report dated 3 January 2018; Sin Chew Daily news report dated 23 February 2021; The Star news report dated 8 January 2021 and Jiao Zong and Dong Zong record of 14 November 2020.

[44] However all these documents are essentially opinions, which are expressed by individual authors, and are plainly purely academic. Their opinions are irrelevant to the construction of the Federal Constitution, the Education Act 1996 and other historical reports. I reiterate that these opinions are not binding on and would not influence the court in arriving at its conclusion as to what the impugned provisions meant.

[45] The core issue has been sufficiently addressed in the clearly defined proposed third and fourth questions (as formulated by the first and second defendants) to determine the crux of the plaintiffs' case. These are purely questions of law, which will decide the main part if not the entire litigation. Needless to say, this will also result in substantial saving of time and costs in pre-trial preparation or in connection with the trial proper.

[46] I would also be inclined to agree with the submission of the counsel for the fifth defendant that the suits filed by the plaintiffs appear more like an academic exercise because the Education Act 1996 is not a law specifically targeted at a particular group of which the plaintiffs are a part. It certainly cannot be said that the plaintiffs are facing a real and credible threat under the said legislation. There is additionally no real and actual controversy affecting the rights and interests of the parties, including the plaintiffs.

[47] In addition, as stated by the Court of Appeal in *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu* (*supra*), the wide discretion under O. 14A of the RC 2012 extends to the power of the court to "frame additional questions or drop or recast the questions framed as he thinks fit and proceed to determine the issues and causes of action". For all intents and purposes, the key questions are the third and fourth questions proposed by the first and second defendants. These concern the constitutionality of the relevant statutory provisions of the Education Act 1996 and whether the vernacular schools are inconsistent with certain Articles of the Federal Constitution. The determination of these questions would wholly dispose of the matter.

[48] Although determination of the questions on *locus standi* dan non-justiciability can potentially on its own, respectively also dispose of this writ action filed by the plaintiffs, in my view these are secondary to the weighty constitutional issues raised by the third and fourth questions that would directly and specifically deal with the true questions in this case. The first and second questions proposed by the first and second defendants should thus be subsumed under the consideration of the third and fourth questions.

[49] It is accordingly manifest that the crux of the present litigation for all intents and purposes concern the Education Act 1996 and Federal Constitution, as pleaded in the amended statement of claim of the plaintiffs, as to whether ss. 2, 17 and 28 of the Education Act 1996 are constitutional and whether the existence of vernacular schools are inconsistent with arts. 5, 8, 10, 11 and 12 of the Federal Constitution.

[50] It is, as stated earlier, no less plain that these issues essentially only involve the interpretation of the provisions of a legislation and those of the supreme law in the country. The determination of these questions in relation to the establishment of vernacular schools would thus involve the construction of the relevant provisions in the historical records and statutory documents prior to the nation's independence, which could include taking judicial notice of the historical events relevant thereto and education reports regarding vernacular schools without the need of hearing oral testimony and leaving the issue of laws to be argued and presented by the counsel at the hearing.

[51] In contrast, the documents that the plaintiffs intend to rely on which are the findings of Professor Dr Sharon Carsten from PSU Institute for Asian Studies, a report attributed to Professor Teo in Utusan Malaysia dated 25 October 2014, a report in The Malaysian Insider, the article in the book "*The Colours of Inequality*" by Pengarah Kajian Khazanah Research Institute, and all the other views documented in the form of various exhibits in support of the plaintiffs' case are purely opinion which is potentially hearsay in nature and would probably be of little, if any, probative value to controvert the true interpretation of the relevant statutory documents.

[52] The third plaintiff also made the argument in support of its case which is on the jurisdiction of the Federal Court under art. 128(1) to determine whether a law made by Parliament or by the Legislature of a State is invalid on the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws.

[53] The third plaintiff maintains that the third question – on the constitutionality of the said provisions of the Education Act 1996 – whilst admittedly a question of law, relates to the validity of a law enacted by the Parliament which may legally only be decided by the Federal Court which therefore is not possible to be addressed in an O. 14A proceeding.

[54] This argument is plainly wrong. The basic rule is that as held in the case of *Ah Thian v. Government of Malaysia* [1976] 1 LNS 3, challenges on legislative competency falls within the exclusive original jurisdiction of the Supreme Court under art. 4(4) of the Federal Constitution (now Federal Court), while challenges to the inconsistency of a law with the Federal

Constitution would fall under the jurisdiction of the High Court. This was also clearly affirmed by the Federal Court in *Gin Poh Holdings Sdn Bhd v. The Government Of The State Of Penang & Ors* [2018] 4 CLJ 1.

[55] A competency challenge concerns only the exclusive jurisdiction of the Federal Court which as stated in art. 128(1) arises only if there is a question of legislative competency of enacting any impugned provision, or if it involves disputes between States and the Federation. A consistency challenge which involves a dispute on whether a legal provision is inconsistent with certain constitutional provisions falls squarely within the jurisdiction of the High Court.

[56] In fact as the plaintiffs should be well aware, in this context, the issues in this case have been judicially determined by the Federal Court in *Mohd Khairul Azam Abdul Aziz v. Menteri Pendidikan Malaysia & Anor* [2020] 9 CLJ 309; [2020] 1 MLJ 398 to be in the nature of a consistency challenge which means that the case must be commenced in and heard in the High Court, which is the reason the present suit was filed herein.

[57] In that case the Federal Court ruled that since Parliament is expressly empowered to legislate on education-related matters as set out in the Ninth Schedule to the Federal Constitution, Parliament is competent to enact the impugned provisions. Thus, despite *Mohd Khairul Azam Abdul Aziz v Menteri Pendidikan Malaysia & Anor* (*supra*) and notwithstanding that the plaintiffs herein have abide by that decision by filing substantially the same suit in the High Court, the plaintiffs raising the same argument that the matter should still be heard at the Federal Court is nothing short of baffling.

Conclusion

[58] In view of the foregoing, it has been found that in this suit, the issues or questions can be suitably determined by an application under O. 14A of the RC 2012, which determination would result in the disposal of the entire case. The arguments concerning the issues and questions of law can be determined by way of undisputed facts, documentary evidence and legal submissions, without the necessity for any oral testimony. The core issues for determination primarily concern constitutional law, and the undisputed facts and the commonly recognised and largely historical records and documents are sufficient for the determination of the entire case in this suit. This approach under O. 14A is also in keeping with the objective of ensuring the expeditious, economical and fair disposal of civil proceedings as envisaged in O. 34 of the RC 2012.

[59] For the reasons discussed above, I find that the defendants have established their case to have this suit be determined by way of an O. 14A proceeding by reference to the two main questions of law to be answered by this court. These are whether ss. 2, 17 and 28 of the Education Act 1996 are contrary to art. 152(1) of the Federal Constitution and whether the establishment and existence of vernacular schools are inconsistent with art. 5 (the right to life or personal liberty), art. 8 (right to equality), art. 10 (right to freedom of speech, assembly and association), art. 11 (freedom of religion), and art. 12 of the Federal Constitution.

[60] As such, the three applications in encls. 182, 185 and 187 in respect of the two proposed questions are allowed. I make no order as to costs.